

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3

4 SYLVESTER OKORO,

No. C 13-2553 CW

5 Plaintiff,

ORDER DENYING  
PLAINTIFF'S MOTION  
FOR LEAVE TO FILE  
AN AMENDED  
COMPLAINT (Docket  
No. 23)

6 v.

7 U.S. BANK NATIONAL ASSOCIATION, a  
banking subsidiary; and DOES 1  
8 through 20, inclusive,

9 Defendants.

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11  
12 Plaintiff Sylvester Okoro moves the Court for leave to file  
13 an amended complaint. Defendant U.S. Bank National Association  
14 opposes the motion. Having considered the papers submitted by the  
15 parties, the Court denies Plaintiff's motion for leave to file an  
16 amended complaint.

17 BACKGROUND

18 In August 2006 Defendant hired Plaintiff as a branch manager  
19 at the Fairway Park branch in Hayward, California. In April 2009  
20 Plaintiff was transferred to the Bayfair branch in San Leandro,  
21 California. Throughout his employment as a branch manager,  
22 Plaintiff was classified as exempt under California law.  
23 Defendant terminated Plaintiff in November 2011.

24 In August and September 2012 Plaintiff filed two complaints  
25 to the California Division of Labor Standards Enforcement (DLSE).  
26 Plaintiff alleged that he had been misclassified as exempt, and  
27 that he was owed overtime premium wages, meal and rest period  
28 premiums, and penalties for late-paid wages. Plaintiff limited

1 his claims to the time period that he worked in the Bayfair  
2 branch. In April 2013 the DLSE issued an order, and in May 2013  
3 Plaintiff filed an appeal of the order to the Alameda County  
4 Superior Court. Defendant subsequently removed on the basis of  
5 diversity jurisdiction.

6 Plaintiff moves for leave to amend to add Donna Nullmeyer and  
7 Fred Palmer as plaintiffs. Nullmeyer was hired by Defendant in  
8 2003 and worked as a branch manager in the Alameda and Fremont  
9 branches. She resigned in June 2011. Palmer was hired by  
10 Defendant in 2004 and worked as a branch manager in several  
11 branches in the East Bay until July 2010. Plaintiff alleges that  
12 Defendant misclassified Nullmeyer and Palmer as exempt and that  
13 they were not paid the overtime wages earned at the date of the  
14 termination of their employment. Plaintiff also alleges that  
15 Defendant did not pay Palmer the bonus that he earned as of the  
16 date of his termination.

17 DISCUSSION

18 A court determining whether to grant a motion to amend to  
19 join additional plaintiffs must consider the joinder requirements  
20 of Federal Rule of Civil Procedure Rule 20(a). Under Rule  
21 20(a)(1), parties may join in one action as plaintiffs where "(A)  
22 they assert any right to relief jointly, severally, or in the  
23 alternative with respect to or arising out of the same  
24 transaction, occurrence, or series of transactions or occurrences;  
25 and (B) any question of law or fact common to all plaintiffs will  
26 arise in the action." Fed. R. Civ. P. 20(a)(1). Rule 20 is  
27 construed liberally "in order to promote trial convenience and to  
28 expedite the final determination of disputes." League to Save

1 Lake Tahoe v. Tahoe Reg'l Planning Agency, 558 F. 2d 914, 917 (9th  
2 Cir. 1977).

3 DISCUSSION

4 Plaintiff fails to satisfy both the first and second prongs  
5 of the test for permissive joinder. The first prong, the "same  
6 transaction" requirement, "refers to the similarity in the factual  
7 background of a claim." Coughlin, 130 F.3d at 1350. Plaintiff  
8 contends that the proposed plaintiffs, like him, work as branch  
9 managers in the East Bay and were similarly misclassified as  
10 exempt from overtime and other wage-and-hour requirements.  
11 However, as Defendant points out, the determination of whether an  
12 individual qualifies as exempt is a "fact-intensive inquiry." In  
13 re Wells Fargo Home Mortgage Overtime Litigation, 571 F.3d 953,  
14 958 (9th Cir. 2009). The Court must "conduct an individualized  
15 analysis of the way each employee actually spends his or her time"  
16 and "determine how much of that work is exempt." Vinole v.  
17 Countrywide Home Loans, Inc., 571 F.3d 935, 945 (9th Cir. 2009).  
18 Here, the three branch managers worked at three different branches  
19 for different lengths of time. The claims of Plaintiff and the  
20 other proposed plaintiffs are based on dissimilar and  
21 individualized facts. Accordingly, the Court finds that the  
22 proposed plaintiffs' claims are not sufficiently related to  
23 constitute part of the same transaction or occurrence.

24 Plaintiff also fails to satisfy the second prong of the test  
25 for permissive joinder: a common question of law or fact.  
26 Plaintiff contends that Defendant's policy of classifying non-  
27 exempt workers as exempt establishes a common legal and factual  
28 question. As stated above, the three branch managers worked in

1 different branches at different times. The Ninth Circuit has  
2 stated that "the mere fact that all Plaintiffs' claims arise under  
3 the same general law does not necessarily establish a common  
4 question of law or fact." Coughlin, 130 F.3d at 1351 (9th Cir.  
5 1997). Where there are different factual circumstances  
6 underpinning the same cause of action, "each applicant or  
7 petitioner presents a different factual situation." Id.  
8 Accordingly, the Court finds that Plaintiff's and the proposed  
9 plaintiffs' claims do not establish a common question of law or  
10 fact.

11 CONCLUSION

12 Accordingly, the Court DENIES Plaintiff's motion for leave to  
13 file an amended complaint. If the proposed new plaintiffs choose  
14 to file complaints in the Northern District of California, they  
15 may file a notice that these cases are related to the above-  
16 entitled case. The Court will consider relating the new cases to  
17 the instant case and coordinating the discovery and case  
18 management schedules.

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20 IT IS SO ORDERED.  
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22 Dated: 11/25/2013

  
CECILIA WILKEN  
United States District Judge

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